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NO. 90-1926

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1990

STATE OF ARIZONA,

Petitioner,

-vs-

RICHARD JOSEPH BUCCINI,

Respondent,

ON WRIT OF CERTIORARI TO THE
ARIZONA SUPREME COURT

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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Question Presented

After determining that there were material omissions in the affidavit for the search warrant under Franks v. Delaware, did the Arizona Supreme Court correctly determine that, under the fourth amendment, the state was required to investigate all possible leads and witnesses prior to seeking a search warrant, and that the failure to affirmatively show this investigative evidence in the affidavit rendered the warrant lacking in probable cause?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF CASES AND AUTHORITIES	iii
STATEMENT OF THE CASE	1
CONCLUSION	8
CERTIFICATE OF SERVICE	9

TABLE OF CASES AND AUTHORITIES

Case	Page
Arizona v. Youngblood 488 U.S. 51 109 S. Ct. 333 102 L. Ed. 2d 281 (1988)	3
Franks v. Delaware 438 U.S. 154 98 S. Ct. 2674 57 L. Ed. 2d 667 (1978)	1,4,7

STATEMENT OF THE CASE

Buccini's brief in opposition reads like a closing argument to the jury. Not even the trial court in this case accused the affiant of purposely lying to mislead the magistrate. Petition at A-50. The state has not and will not suggest that the affidavit was well drafted. However, it does not matter at this point whether the officer lied to the magistrate or not. The redrafted affidavit contains probable cause to search. The only way the majority of the Arizona Supreme Court could have concluded otherwise was to have accepted the defendant's testimony about his alibi defense as true and castigate the police officer for not proving or disproving this defense before he sought the warrant. That is not what a reviewing court is supposed to be doing under the Franks v. Delaware, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978) line of cases. The Arizona

Supreme Court is ill-suited to be directing police investigations.

Buccini's brief keeps repeating the mistaken notion that a police officer is supposed to finish his investigation completely before he seeks a search warrant. Buccini says: "...the officer could have compiled the requisite probable cause if he simply would have completed his investigation." Brief in Opposition at 9, 22. This Court's cases do not stand for that proposition. On its face, such an idea is ludicrous. The detective gave the reason at the hearing:

> It is my experience in dealing with this individual and talking with him for the length of time I did, and presenting what I had in the case, and him knowing that and him telling me he was going to leave the residence, that he was going to work, I felt he was going to take the stuff with him or somehow destroy it before I got back.

(R.T. of Feb. 27, 1989, at 46.) The police officer's job is not to prepare the defense case for trial. See Arizona

v. Youngblood, 488 U.S. 51, 109 S. Ct. 333, 102 L. Ed. 2d 281 (1988).

This "airtight" alibi, as Buccini calls it in his brief, has never been supported by anything other than his own testimony. The Arizona courts never heard from his allegedly disinterested witnesses either by way of affidavit or live testimony. The list of alibi witnesses that Buccini gives in his brief were unknown to the officer. When Buccini asked about those people, the detective testified: "Sam and Dwayne Nanna were mentioned. Those were the only 2 people mentioned." (Id. at 26.) The detective gave a straightforward reason for not naming them in the affidavit:

> At the time of this affidavit, I thought the explosion occurred at 12:30. After interviewing the Defendant, he gave me 2 statements, one of which was he left the bar sometime between 12:00 and 12:30, and the other one was he went home from 12:15 to 12:30.

> That told me that if an explosion happened at 12:30, and the statements that he made, he wouldn't have been with anybody. He said he wasn't at the bar between 12:00 and 12:30.

(Id. at 47.)

There is even more in the record to support the officer's credibility. The state has not dwelled on that because that is not the legal issue in the case. The issue is whether the reviewing court properly redrafted the affidavit. In other words, can Franks v. Delaware be read to require the police to chase down every lead in the case before they seek a search warrant? The incomplete investigation theory is the only reason the majority on Arizona's highest court gave for not finding probable cause. Why should it matter what was left out of the affidavit if, as the lower appellate court and the dissent found, there was enough good, undisputed information in the affidavit to provide probable cause?

Buccini tries to draw attention away from this issue by also calling the state a liar. At page 26 he says the state has made unfounded assertions about his possession of the same kind of fuse as that used in the bomb and about illegally possessed military explosives. Both of those statements about the fuse and the military explosives appear in the affidavit even after it was redrafted by the Arizona Supreme Court. Petition at A-53. Likewise, contrary to Buccini's assertion at page 25 of the brief in opposition, the motive or grudge against the victim is plainly stated in the redrafted affidavit. Buccini was involved in a traffic accident with the victim and Buccini "insisted on paying for the damage so that he would not lose his job as a chauffer-driver for Canyon Ranch Resort. Police were called anyway [by the victim] and a report was made." Petition at A-52. "He [Buccini] stated

he was on probation at Canyon Ranch Resort where he works because of the accident he was involved in as well as another vehicle accident that occurred a week after the March 31 accident." (Id.) Buccini never disputed those facts in the trial court. He cannot call them false at this juncture. Those facts look like a motive. They look like a motive that fits the "drop it" note placed on the victim's windshield. Buccini also had opportunity. From his own statement, it is obvious that he was out drinking and that he was in the area around the time the bomb exploded. As pointed out by the dissent, even under the redrafted affidavit, Buccini could have planted the bomb while driving from the bar to his parents' house. Petition at A-44. These facts together with the fact that Buccini was a self-admitted experimental explosives enthusiast who possessed some of the same materials used in the

exploded pipe bomb should lead a reasonable person to believe that evidence of the crime could be found in Buccini's residence or vehicle. The Arizona Supreme Court has wrongly interpreted Franks v. Delaware to require that the officer interview a list of potential defense witnesses before seeking that warrant. This Court should accept this case and hold that potentially exculpatory leads or witnesses need not be investigated prior to the state's seeking a warrant.

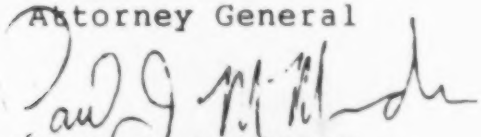
CONCLUSION

This Court should accept this case and hold that potentially exculpatory leads or witnesses need not be investigated prior to the state's seeking a warrant.

DATED this 6th day of August, 1991.

Respectfully submitted,

GRANT WOODS
Attorney General



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CERTIFICATE OF SERVICE

THREE COPIES of this Brief were mailed this 2nd day of August, 1991, to:

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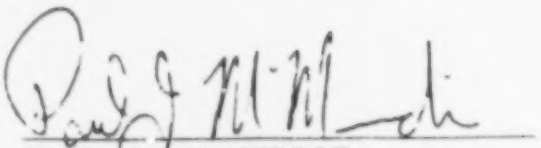

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